

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERALD PRICE,	§
	§
Defendant Below-	§ No. 513, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0505010414
Plaintiff Below-	§
Appellee.	§

Submitted: December 16, 2008

Decided: February 23, 2009

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 23rd day of February 2009, after careful consideration of appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Gerald Price, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Price's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Price was indicted in June 2005 on charges of first degree robbery, possession of a firearm during the

commission of a felony, third degree burglary, and two counts of aggravated menacing stemming from the April 2005 robbery of a coffee shop in the Newark Library. A Superior Court jury convicted Price in November 2006 of first degree robbery and third degree burglary. The Superior Court sentenced Price to a total period of five years at Level V incarceration to be followed by decreasing levels of supervision. This Court affirmed Price's convictions and sentence on direct appeal.¹

(3) Price filed a petition for postconviction relief in August 2008, raising five arguments: (i) ineffective assistance of counsel; (ii) insufficiency of the evidence to sustain his convictions; (iii) credibility of the witnesses; (iv) illegal sentencing; and (v) double jeopardy. The Superior Court held that Price's ineffective assistance of counsel claim, as well as his challenge to his sentence, had no merit. The Superior Court further found that Price's three remaining claims were procedurally barred. Price appeals that ruling.

(4) This Court reviews the Superior Court's denial of postconviction relief for abuse of discretion.² We first must apply the procedural requirements of Rule 61 before considering the merits of any postconviction claims.³ Price's arguments challenging the sufficiency of the

¹ *Price v. State*, 2007 WL 3087246 (Del. Oct. 24, 2007).

² *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

evidence and the credibility of the witnesses were not raised in his direct appeal. Rule 61(i)(3) provides that any claims that were not asserted in the proceedings leading to the judgment of conviction are thereafter barred unless the petitioner can establish cause and prejudice to excuse the procedural default.⁴ Price did not establish cause for his failure to raise these claims earlier. Accordingly, we find no error in the Superior Court's conclusion that these claims are procedurally barred.

(5) Similarly, Price's "double jeopardy" argument is procedurally barred because it was raised and rejected by this Court on direct appeal. Although phrased as a "double jeopardy" claim, Price, in fact, argues that he should not have been convicted of "armed robbery" when the jury found him not guilty of possession of a firearm. We rejected this claim on direct appeal, finding no inconsistency in the jury's verdict, because first degree robbery only requires that the defendant display *what appears to be* a deadly weapon.⁵ It does not require actual possession of a firearm. We do not find

⁴ Del. Super. Ct. Crim. R. 61(i)(3) (2009). The rule provides, "Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) Cause for relief from the procedural default and (B) Prejudice from a violation of the movant's rights."

⁵ *Price v. State*, 2007 WL 3087246, *3 (emphasis added).

reconsideration of this previously adjudicated claim to be warranted in the interest of justice.⁶

(6) Price next claims that his trial counsel was ineffective in the way he cross-examined witnesses and because he failed to keep Price informed about his case. To prevail on a claim of ineffective assistance of counsel, a defendant must establish that (i) his trial counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, the outcome of the proceedings would have been different.⁷ The defendant must set forth and substantiate concrete allegations of actual prejudice.⁸ Moreover, there is a "strong presumption" that counsel's representation was professionally reasonable.⁹ In this case, Price offers no specific details on what he believes his counsel should have done differently. In the absence of any concrete allegations of error, we find no abuse of the Superior Court's discretion in rejecting the merits of Price's claim.

⁶ Del. Super. Ct. Crim. R. 61(i)(4) (2009) (holding that any ground for postconviction relief that was previously adjudicated is thereafter barred unless reconsideration of the claim is warranted in the interest of justice).

⁷ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁸ *Younger v. State*, 580 A.2d at 556.

⁹ *Strickland v. Washington*, 466 U.S. at 689.

(7) Price's final argument is that the Superior Court issued a corrected sentencing order without Price's knowledge. Price originally was sentenced on the robbery and burglary convictions on February 2, 2007. In June 2007, the Superior Court issued a corrected sentencing order, which eliminated extraneous language from the original sentence related to a separate violation of probation charge. The June 2007 sentencing order did not affect the terms of Price's sentence on the robbery and burglary charges. Because the correction was clerical in nature, the Superior Court was not required to notify Price prior to correcting the error.¹⁰

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ See Del. Super. Ct. Crim. R. 36 (2009) (holding that clerical errors in orders may be corrected at any time and after such notice, *if any*, as the court orders).